IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 529.

MARIE DE SYLVA,

Petitioner,

—against—

MARIE BALLENTINE, as Guardian of the Estate of Stephen William Ballentine,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AN *AMICUS CURIAE*

SONGWRITERS' PROTECTIVE ASSOCIATION

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MOTION OF SONGWRITERS' PROTECTIVE ASSOCIATION FOR LEAVE TO FILE A BRIEF AS AN *AMICUS CURIAE*

Songwriters' Protective Association respectfully applies to this Court for leave to file a brief *amicus curiae* in the above entitled proceeding, pursuant to Rule 42 (3) of the rules of this Court, on the following grounds:

1. Songwriters' Protective Association is an unincorporated association which has been in existence for upwards of twenty years. Its membership comprises more than 2500 American composers and authors of musical compositions.

2. The interest of composers and authors in the instant case stems from the fact that it involves a novel inter-

pretation and construction of Section 24 of the United States Copyright Law, Title 17, U. S. Code, which deals with copyrights and the persons authorized to secure them.

3. Until the decision in the instant case the view most prevalent amongst lawyers and laymen had been that if an author were not living when the first term of his copyright expired, the right to renew the copyright inured to his widow who took precedence over his children. This construction seemed not only logical but to have been fortified by cases such as *Silverman* v. *Sunrise Pictures Corporation*, 273 Fed. Rep. 909 (C. C. A. 2d Cir.).

4. In the instant case the Court has interpreted the statute as constituting the widow and children members of the same class, all entitled to participate equally in the renewal. In consequence, each member of the class is not only entitled to share in the proceeds of exploitation of the copyrighted work, but may also be authorized to grant licenses or other non-exclusive rights in respect thereof.

Your applicant respectfully submits that this construction is erroneous and illogical. But even were it a proper construction of the Copyright Law, this case should still be considered by this Court. As long as any doubts exist concerning the construction of Section 24 of the Copyright Law, myriads of copyrights presently in the renewal stage or about to reach that stage are in jeopardy. Innumerable controversies must arise concerning agreements relating to these renewal copyrights, and concerning the sharing and distribution of money derived therefrom.

This chaotic condition can be avoided only by a consideration of the problem by this Court.

5. The chaotic condition created by the instant decision is intensified by the holding that an illegitimate child stands on the same footing as one who is born in lawful wedlock. That in itself should be a basis for a consideration of the ruling below by this Court.

6. The attorney for petitioner has consented to the filing of a brief *amicus curiae* by Songwriters' Protective Association but the attorneys for respondent have withheld their consent.

WHEREFORE, it is respectfully prayed that an order be made and entered herein granting the within motion, and for such other and further relief as to this Court may seem just and proper in the premises.

Respectfully submitted,

SONGWRITERS' PROTECTIVE ASSOCIATION
By JOHN SCHULMAN
SOLOMON A. KLEIN

IN THE

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MARIE BALLENTINE, as Guardian of the Estate of Stephen William Ballentine,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

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IN THE

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION OF MOTION PICTURE ASSOCIATION OF AMERICA, INC. FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

The Motion Picture Association of America, Inc. respectfully moves this Court for leave to file a brief *amicus curiae* in this action pursuant to Rule 42(3) of the Rules of this Court. The consent of the attorney for the petitioner has been obtained. The consent of the attorney for the respondent was requested but refused.

1. The Motion Picture Association of America is a non-profit membership organization having among its members twenty-three motion picture producing and distributing companies including the nine major motion picture

producers in the United States, namely: Allied Artists Pictures Corporation, Columbia Pictures Corporation, Loew's Incorporated, Paramount Pictures Corporation, Republic Pictures Corporation, RKO Radio Pictures, Inc., Twentieth Century-Fox Film Corp., Universal Pictures Company, Inc., Warner Bros. Pictures, Inc.

2. The interest of the Association in this litigation derives from the fact that its members are engaged in the production and distribution of motion pictures which are based on, or include, the various forms of literary and musical material made the subject of the Copyright Act, such as books of fiction and non-fiction, magazine stories, dramatic, musical, and dramatico-musical compositions.

3. Since these works, if acquired, will at great expense be adapted for motion pictures, the producers must perforce obtain exclusive rights. Absent exclusive rights, the possibility of use by competing media of the work underlying the motion picture will, in all but a few instances, deter the acquisition of said work and its subsequent presentation to the public in the form of motion pictures.

4. These exclusive rights, in the case of renewal copyrights, must be obtained from the copyright renewer. The appropriate copyright renewer is designated in 17 U. S. C. 24,[1] the section here in issue.

5. The adversaries, as below, will have a limited interest in the interpretation of Section 24. Their briefs will be concerned with the distribution of the financial benefits resulting from the composer's creativity. The primary object of the Copyright Act, however, is "to promote the progress of science and useful arts" (U. S. Const., Art. 1, § 8). The renewal section must be interpreted with that

[1] "* * * the author of such work, if still living, or the widow, widower, *or* children of the author, if the author be not living * * * shall be entitled to a renewal and extension of the copyright * * *." (Italics added.)

object in mind. Consonant therewith is the availability of exclusive rights, which encourages and make possible the widest distribution and dissemination of the work.

The motion picture is one of the forms favored by Congress for the distribution of works. This is evidenced by the copyright protection given by Congress to motion pictures.[2] Again, it should be noted that motion picture companies cannot be expected to purchase for film production literary, musical or dramatic works in which they cannot secure exclusive rights. This, in turn, will affect the public and the creator, the intended beneficiaries of the copyright law. It would decrease materially the adaptations which would be made available to the public and would concomitantly substantially reduce the value of the additional period of protection granted to the author's bounty.

WHEREFORE, it is respectfully urged that the Motion Picture Association of America, representing a most important media for the distribution to the public of creators' works, should be permitted to present *amicus* this issue.

Respectfully submitted,

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[2] 17 U. S. C. 5 (l) and (m).

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF MUSIC PUBLISHERS' PROTECTIVE ASSOCIATION, INC. AS *AMICUS CURIAE*

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BRIEF OF MUSIC PUBLISHERS' PROTECTIVE ASSOCIATION, INC. AS *AMICUS CURIAE*

This brief is submitted by Music Publishers' Protective Association, Inc. as *amicus curiae* pursuant to leave granted by this Court on the 9th day of January, 1956.

Interest of *Amicus Curiae*

The Music Publishers' Protective Association, Inc. is a non-profit membership corporation organized and existing under the laws of the State of New York. It is a trade association of the popular music publishing industry. Its membership consists of forty-five active music publishers, which include many of the foremost American publishers of popular music.

The interest of Music Publishers' Protective Association, Inc., in this matter arises out of the fact that this case involves the judicial interpretation and construction of a portion of section 24 of the United States Copyright Law, Title 17, U. S. Code, said section being the section which sets forth the persons who are entitled to renewals and extensions of United States copyrights and the order in which such persons take. The particular portion of the section involved provides:

> "* * * That in the case of any other copyrighted work * * * the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright * * *"[1]

The main question presented for decision is whether, when an author is dead, this section is to be interpreted as granting to his widow, the sole right to obtain and dispose of and grant licenses under a renewal copyright, or whether, during the widow's lifetime, his children have rights equal to and concurrent with the rights of the widow in that respect.

The Court below has interpreted the statute so as to place a widow and children in the same class, and has held in substance, that if the widow renews a copyright, such renewal inures to her benefit and the benefit of the children "as a class". This holding would appear to constitute the widow and child co-owners or tenants in common.

The right of each part or common owner of a copyrighted work to license has been recognized (*Silverman* v. *Sunrise Pictures Corporation*, C. C. A. 2nd, 1921, 273 Fed. Rep. 909), and there is authority for the principle that

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[1] Section 24 of Title 17 U. S. Code in its entirety follows this brief as Appendix A.

each co-owner of a work has an independent right to dispose of the work. (*Edward B. Marks Music Corporation* v. *Jerry Vogel Music Co., Inc.*, C. C. A. 2nd, 1944, 140 Fed. 2nd 266; *Shapiro, Bernstein & Co., Inc.* v. *Jerry Vogel Music Co., Inc.*, District Court, S. D. N. Y., 1947, 73 Fed. Supp. 165.)

Accordingly, it would appear to follow that under the decision below a child's right to dispose of a copyright—even one already renewed and assigned by a widow—or to license the exercise of rights thereunder, would be independent of, equal to, and concurrent with the right of such widow.

The consensus of opinion among the vast majority of publishers, authors and copyright attorneys always has been to the contrary—namely, that an author's widow has the sole right to renew and dispose of a copyright coming due for renewal during her lifetime.

Since the members of Music Publishers' Protective Association, Inc. depend almost entirely upon the acquisition of copyrights, renewals of copyright and various exclusive rights thereunder, all of them have a vital interest in the judicial interpretation and construction of this section of the statute. In a great many cases, publishers, in good faith, and, in reliance upon advice of counsel and the generally accepted interpretation of the statute, have acquired renewals of United States copyrights from widows of deceased authors, and the very nature of the publishing business makes it essential that publishers continue to negotiate for and acquire such renewals.

A second question presented by this case is whether the word "children", as it is used in the statute, includes an illegitimate child.

The judgment and decision of the United States Court of Appeals, Ninth Circuit, therefore, affects practically

every type of publisher of every type of music with respect to a most important, if not indeed vital phase of their business.

At this point counsel wishes to call to the attention of this Court the following facts. Two members of Music Publishers' Protective Association, Inc., the *amicus curiae* herein, namely, Shapiro, Bernstein & Co., Inc. and Crawford Music Corporation[2], have an interest in the outcome of this case, as hereinafter will more fully appear. Furthermore, in addition to being general counsel for Music Publishers' Protective Association, Inc., counsel wishes to point out that his firm represents Crawford Music Corporation, T. B. Harms Company and Music Publishers Holding Corporation, hereinafter referred to.

Summary of Argument

The grant of renewal rights contained in section 24 of the Copyright Law to a deceased author's "widow, * * * or children" constitutes an absolute grant to the widow of any renewal copyright accruing during her lifetime, and a contingent or substitutional gift to the children in the event there is no widow.

This conclusion is made clear from a study of the historical development of copyright legislation in this country.

This conclusion is supported by judicial interpretations of similar language.

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[2] By Certificate of Change of Name dated the 11th day of October, 1951 and filed in the office of the Secretary of State, Albany, New York on the 15th day of October, 1951, the name of Crawford Music Corporation was changed to DeSylva, Brown & Henderson, Inc. The inclusion of the name DeSylva in the name of said corporation is wholly without significance; petitioner does not own or control, either directly or indirectly, any proprietary or other interest whatsoever in the said corporation.

The grant of copyright renewal rights to a widow to the exclusion of the author's children is entirely consistent with general Federal legislative policy, which in statutes dealing with death and similar benefits, gives precedence to widows over children.

The interpretation of section 24 by the Court below is entirely inconsistent with obvious legislative intent in that it is contrary to the best interests of the author and his family.

The interpretation of the statute by the Court below is contrary to the basic concept upon which all copyright legislation is based in that it tends to break down and destroy exclusivity, the essential element upon which copyright necessarily depends.

Music publishers, authors and composers uniformly have interpreted the statute as securing to the widow the renewal right to the exclusion of children, and they have been fortified in such interpretation by the great weight of authorities who have expressed themselves on the subject.

Music publishers, authors and composers have acted in accordance with this interpretation of the statute; music publishers, in a great many instances, have dealt with widows and have actually entered into agreements in good faith with widows under the assumption that they were obtaining exclusive rights from them.

The interpretation by the Court below of the word "children", as it is used in the statute, so as to include illegitimate children virtually places a cloud upon the renewal rights of not only widows but also the legitimate children of all authors, because no assignee or licensee of such persons can be certain that the title he has taken from them will not be attacked by one claiming through an illegitimate child theretofore unknown.

The decision below which grants to the children of a deceased author a renewal right equal to and concurrent with that of the widow, and which in addition, treats an illegitimate child as legitimate for such purpose, will result in chaos and confusion in the industries which deal with copyrighted works.

ARGUMENT

I

The sequence of words "widow, widower, or children of the author" in Section 24 must be so construed as to grant to the author's widow the renewal and extension of a copyright which comes due for renewal during her lifetime to the exclusion of children.

A. The Statute and its Development

The language of the statute should be given its natural and ordinary meaning. There does not appear to be any reason to place a strained interpretation upon it. The Congress saw fit to use the word "*or*" which generally indicates the disjunctive, whereas, had it intended to secure the right of renewal equally to the widow and children, it would have been logical for Congress to have used the word "*and*".

This is borne out by a consideration of the legislative history of the renewal provisions in the United States.

The original copyright act in the United States was enacted by the second session of the first Congress in 1790. It provided for a double term and the distribution of the renewal rights of the author, upon his death, to his "* * * executors, administrators or assigns * * *". (Section 1 of the Act of May 31, 1790 (First Congress, Second Ses-

sion, Chapter 15), reprinted in Copyright Enactments of the United States, compiled by Thorvald Solberg, Register of Copyrights, Copyright Office Bulletin No. 3, Second Edition, Revised, at page 32.)

Thereafter, for the forty year period between 1790 and 1831 an author could pass by will his right of renewal to any person named by him as legatee. He was not, in any way, restricted in his choice of legatee.

In 1831 the law was changed and section 2 of the Copyright Act of February 3, 1831 provided:

> "* * * That if, at the expiration of the aforesaid term of years, such author, inventor, designer, engraver, or any of them, where the work had been originally composed and made by more than one person, be still living, and a citizen or citizens of the United States, or resident therein, or, being dead, shall have left a widow, or child, or children, *either or all then living*, the same exclusive right shall be continued to such author, designer, or engraver, or, if dead, then to such *widow and child, or children*, for the further term of fourteen years: * * *" (Italics supplied)

(Section 1 of the Act of February 3, 1831 (Twenty-First Congress, Second Session, Chapter 16), reprinted in Copyright Enactments of the United States, compiled by Thorvald Solberg, Register of Copyrights, Copyright Office Bulletin No. 3, Second Edition, Revised, at page 37.)

The Act of 1831 provided for, what may with justice be denominated a "forced legacy". It protected the author's family against the improvident disposition of the renewal rights by the author's will. It was undoubtedly mean to be understood as "* * * such widow and child" or "such widow and children, * * *".

This renewal provision remained unchanged until the Act of 1870 which provided for renewals of copyright

in a new section pointedly rewritten in several particulars. Section 88 of that Act read.

> "* * * That the author, inventor, or designer, if he be still living, and a citizen of the United States or resident therein, or his *widow or children*, if he be dead, shall have the same exclusive right continued for the further term of fourteen years, * * *" (Italics supplied).

(Section 88 of the Act of July 8, 1870 (Forty-First Congress, Second Session, Chapter 230), reprinted in Copyright Enactments of the United States, compiled by Thorvald Solberg, Register of Copyrights, Copyright Office Bulletin No. 3, Second Edition, Revised, at pages 46-47.)

The language of the Act of 1870 retained the so-called forced legacy provision for the deceased author's family, but very conspicuously omitted the important phrase "* * * *either or all then living* * * *", reemphasizing the change intended by this omission by designating the members of the family who were to receive the renewal rights upon the author's death as the "* * * *widow or children* * * *".

There has been no relevant change in the phraseology of the renewal provision since 1870, and as aforesaid the current law, the Act of 1909, secures the renewal right to the "widow, widower, or children".

The key to the correct interpretation of the current statutory language is to be found in a comparative rereading of the phraseology found in the renewal provisions of the Acts of 1790, 1831 and 1870. Each of these Acts must be considered part of a continuous growth of Congressional policy.

The Act of 1790 provided in effect that an author might dispose of his renewal rights by will. The Act of 1831 provided in effect that these renewal rights went to the

widow *and* children of the author, regardless of his will. The Act of 1870 completed the process by providing that the forced legacy went to the author's widow *or* children.

The transition from "and" to "or" can not be interpreted as a mere matter of chance. That a deliberate change in policy was intended by the substitution of "*or*" for "*and*" is corroborated by the simultaneous omission from the Act of 1870 of the phrase "* * *either or all then living * * *".

The use of the word "and" plus the clause "*either or all then living*" indicates a grant of the renewal right to those persons then living *as a class*. The 1870 Act which dropped the words "*either or all then living*" and changed the conjunctive "*and*" to the disjunctive "*or*" constitutes an absolute grant to the widow, or if there be no widow, then a substitutional grant to the children. The 1909 Law, which still is in effect, continued the use of the disjunctive "*or*". (See Appendix A.)

That the substitutional gift was intended to replace the gift to the class in 1870 by this deliberate change in phraseology of the forced legacy renewal provision, is made extraordinarily clear when we look to the construction of this phraseology in other situations, for once we have interpreted the phrase "*widow or children*" correctly, the omission of "* * * either or all then living * * *" appears a necessary concomitant.

B. The Meaning of "Widow or Children"

Similar language has been construed judicially before. In the case of *Addison* v. *New England Commercial Travelers Association* (1887), 144 Mass. 591, 12 N. E. 407, the Supreme Judicial Court of Massachusetts was called upon to construe an application for a life insurance policy. In the application, where information was requested as to

the name or names of the beneficiaries, the applicant had stated "my wife *or* my daughters".

The Court held at page 593 that:

> "* * * the meaning is sufficiently plain that he intended the payment should be to his widow, or, if he left no widow, to his surviving daughters. This is the natural meaning of the language * * *"

In the case of *Bender* v. *Bender* (1910) 226 Pa. 607, 75 A. 859, 134 Am. St. Rep. 1088, the will contained a devise to "Johannes Bender or his children". The lower Court had construed the word "or" as "and", but on appeal it was held at pages 611 and 612:

> "Clearly this was a case where the learned court fell into serious error through attempting to construe something which did not call for construction * * *. In grammatical construction the devise is entirely correct; and it is so definite in expression and terms that but one meaning can be derived from it. It points unmistakably to an alternative gift and with equal certitude to the intended alternate beneficiary. * * * the devise imports a substitutional gift to provide against a possible failure of Johannes to take."

In the case of *Carlin* v. *Helm* (1928) 331 Ill. 213, 162 N. E. 873, the Court construed a will containing a bequest to "* * * Aura F. Hecox and her children * * *". In that case the Court distinguished between the use of the word "and" which would have indicated a tenancy in common and the word "or" and held at pages 223 and 224:

> "If the words 'and her children' be read 'or her children' the meaning of the testator is as contended for and the children are to be substituted in the event of the death of their mother. But that is not the question presented. The authorities cited in support of a construction favoring the substitution of 'or' for 'and' are not applicable here. Courts may construe, but are not permitted to make, wills."

Similarly, in the case of *Tate* v. *Amos* (1929) 197 N. C. 159, 147 S. E. 809, the testator gave his lot "To Grace Darling Winend Hendrick * * * or to her children * * *". The question presented to the Court was whether Mrs. Hendrick took a fee simple or was to be considered a tenant in common with her children. The Court in holding that she took a fee simple stated at pages 161 and 162:

> "Appellants, defendants, contend (first) that in the construction of the will 'or' means 'and' and the lot in controversy would vest in Grace Darling Winend Hendrick and Charlie Thomas Hendrick, Jr., as tenants in common.
>
> This court uniformly held that a devise to A. and her children, A. having children, vests the estate to them as tenants in common. * * * After providing for the son, she devises the lot in controversy to Mrs. Hendrick *or to her children*. We think the principle applicable here is well stated in 1 Jarman on Wills, p. 612, as follows: 'The strong tendency of the modern cases certainly is to consider the word 'or' as introducing a substituted gift in the event of the first legatee dying in the testator's lifetime; in other words, as inserted, in prospect of, and with a view to guard against, the failure of the gift by lapse.'" (Italics supplied)

It appears to be well settled indeed that a testamentary disposition to a given person "or his children" gives to the children a gift only by substitution upon the death of the given person and that the word *"or"* is not to be construed interchangeably with the word *"and"* in this connection. (*Schaeffer's Adm'r.* v. *Schaeffer's Adm'r.* (1903), 54 W. Va. 681, 46 S. E. 150; *Rolf's and Leising's Guardian* v. *Frischolz' Executor* (1933), 251 Ky. 450, 65 S. W. 2d 473; *Early* v. *Taylor* (1941), 219 N. C. 363, 13 S. E. 2d 609; *Penley* v. *Penley* (1850), 12 Beav. 547, 50 Eng. Reprint 1170.)

The phrase "widow or children", therefore, can be interpreted in only one way, namely, a grant to the

widow if she is alive, and a grant to the children, only in the event that she is not alive. This obviously is the reason why the words *"either or all then living"* were stricken from the Copyright Statute in 1870.

Section 24 of the Copyright Statute was considered by the Circuit Court of Appeals, Second Circuit in the case of *Silverman* v. *Sunrise Pictures Corporation* (*supra*), 273 Fed. Rep. 909. In that case the Court held at page 911:

> "The purpose of the statutory renewal provisions is to give to the persons enumerated *in the order of their enumeration* a new right or estate, not growing legally out of the original copyright property, but a new creation for the benefit (if the author be dead) of those naturally dependent upon or properly expectant of the author's bounty." (Italics supplied)

Since the order of enumeration set forth in section 24 is "widow, widower, or children" it would seem clear that the rights in a copyright coming due for renewal after the death of the author, but during the lifetime of his widow, inure exclusively to the widow, and that the children of the author do not acquire any right of renewal with respect thereto.

As will later be pointed out in more detail, the music publishing industry always has interpreted the statute as granting to the widow of a deceased author a right prior to and exclusive of that of the children of such an author. Publishers regularly have conducted their business and acted upon such an interpretation, and needless to say, the holding of the Court in the case of *Silverman* v. *Sunrise Pictures Corporation* (*supra*), as well as other authorities hereinafter cited, did much to fortify publishers in such an interpretation of the statute.

II

An interpretation of Section 24 of the Copyright Law which grants to the widow a right of renewal having precedence over the right of children is consistent with general legislative policy which has resulted in the widow usually taking precedence over children in federal legislation.

Congress, on numerous occasions has enacted legislation dealing with the distribution of death and other benefits. It must be assumed that various methods of distribution were considered in each case, and, therefore, it is noteworthy that Congress repeatedly has conferred these benefits on the widow to the exclusion of the surviving children of a deceased.

For instance, in providing for the payment of the accrued compensation of deceased members of Congress, Congress provided that such compensation shall go to the widow. (Title 2 U. S. C. A. 1955 Supp., Sections 36a (Senate) and 38a (House)).

The allowance payable on the death of an army or air force officer is granted to the widow. (Title 10 U. S. C. A. 1955 Supp., Section 903).

These examples clearly show that as between a widow and children, the first concern of Congress is the widow and any provision for the benefit of children is purely secondary.

On innumerable other occasions, Congress in legislating on the subject of the distribution of death benefits, has provided that the surviving spouse shall take precedence. (Pay and Allowances, Title 37 U. S. C. A. Supp., Section 362; Pensions, Bonuses and Veterans' Relief, Title 38

U. S. C. A. Sections 96, 191, 661, 691d, 739(a)(2), 802(h)(3), 852; Public Lands, Title 43 U. S. C. A. Sections 278 and 280 (1955 Supp.); Railroads, Title 45 U. S. C. A. Section 228e(f)(1)

Title 37 (Pay and Allowances), Section 35 (a) (2) (i) and Section 35 (b) (i) appear to be the only similar sections in the U. S. Code which provide for the children of the deceased taking an interest concurrent with that of the surviving spouse. These sections read respectively, "(i) to such holder's surviving spouse and children, if any, in equal shares; * * *", and "(i) to such member's or former member's surviving spouse and children, if any, in equal shares;".

It is indeed significant that in these cases not only did Congress use the word "and" but in addition set forth specifically the share which each should take.

Section 24 of the Copyright Law has no indication as to the proportions in which "widow or children" should share. The Court below has interpreted this section as providing that the widow and children are members of the same class. This in effect is a judicial interpolation of an intestacy statute into the Copyright Law where one was not intended. Can it be said that if an author dies leaving a widow and one child each would take a half interest in his renewal copyrights, whereas if the author had left nine children, the widow and each child would receive only a tenth interest in such renewal copyrights? Could Congress have intended such an absurdity? It is submitted that such an interpretation is both unrealistic and unreasonable, and yet the decision of the Court below construed the law in just that way. In effect it designates the child and the petitioner tenants in common, presumably granting to each a half interest in the renewal rights of the author. Had there been nine children instead of just the one, would the widow, as one of ten tenants in common, have had her share reduced to one tenth, or would some other proportion have to be established by judicial decree?

III

To effectively give meaning to the obvious intent of the statute it must be construed as giving to the widow the sole right to a renewal copyright coming into existence during her lifetime.

The Constitution of the United States is the authority under which all copyright legislation is enacted, and in the light of which all copyright legislation must be construed.

Article I, Section 8 grants to Congress in Clause 8 the power

> "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the *exclusive* Right to their respective Writings and Discoveries." (Italics supplied)

The Constitution, therefore, makes two things clear. First, that the basic purpose is to promote the progress of science and the useful arts. In order to accomplish this there must be secured to inventors and scientists adequate compensation and reward for the fruits of their labors to provide them with incentive and livelihood. The second thing that the Constitution makes clear is the method by which such a result is accomplished, namely, "by securing for limited Times to Authors and Inventors the *exclusive* Right to their respective Writings and Discoveries." (Italics supplied) As was set forth in Committee Report (number 2222) on the Bill enacting the Copyright Act of 1909 reprinted in "The Copyright Law", Third Edition by Herbert A. Howell, page 253, at page 260:

> "It will be seen, therefore, that the spirit of any act which Congress is authorized to pass must be one which will promote the progress of science and

the useful arts, and unless it is designed to accomplish this result and is believed, in fact, to accomplish this result, it would be beyond the power of Congress."

Therefore, in considering questions involving copyright, two things must be borne in mind. One, that the purpose of the legislation is to create a property right of substantial value for the benefit of the author, and second, that this is to be done by granting to him exclusive rights in his work.

The very essence of copyright, therefore, is exclusivity and the inherent value of copyright depends upon exclusivity.

The framers of our Constitution recognized the necessity for exclusivity because of the nature of the type of works involved. In order that a literary, musical or other artistic work may be exploited and presented to the greatest advantage of the author, the right to exploitation and presentation must be secured wherever possible to a single entity.

No music or book publisher would be willing to invest as much time, effort and money in the publication and exploitation of a work which was not his exclusively to publish and exploit as one in which he did have exclusive rights. Likewise, no theatrical producer would be inclined to invest a great deal of money and time in the presentation of a play if there was a likelihood or even a possibility of a competing producer presenting the same play simultaneously.

The construction of the statute by the Court below tends to destroy exclusivity, because it strips the widow of the sole right to assign the property or to grant an exclusive license permitting its use. In fact, the decision of the Court below already has had an actual effect upon the exclusivity of rights in the works of B. G. DeSylva.

As *amicus curiae* we respectfully submit that this Court should know the following circumstances:

On the 26th day of September, 1946 the said B. G. DeSylva entered into two separate agreements, one with Crawford Music Corporation and the other with T. B. Harms Company, publishers of his own choosing, pursuant to which he assigned the renewal rights in a great many musical compositions written in whole or in part by him to such publishers, and his wife Marie DeSylva, the petitioner herein, joined in both said agreements and assignments.

These agreements were recorded in the office of the Register of Copyrights in Washington, D. C. on or about November 15, 1946 in volume 614 pages 53 through 71 (both inclusive).

Inasmuch as these agreements have been so recorded, and as a result thereof, have become public records, we respectfully ask the Court to take judicial notice of them and their contents.

The said agreement with Crawford Music Corporation is annexed hereto as Appendix B. The said agreement with T. B. Harms Company is annexed hereto as Appendix C. The joining of Marie DeSylva in said agreements appears from Exhibits B attached thereto.

On the 26th day of September, 1946 B. G. DeSylva entered into an agreement with Music Publishers Holding Corporation, a publisher of his own choosing, pursuant to which he assigned the renewal rights in a great many other musical compositions written in whole or in part by him to Music Publishers Holding Corporation, and his wife Marie DeSylva, the petitioner herein, also joined in the said agreement and assignment by simultaneously entering into a concurrent agreement.

The said agreements were recorded in the Office of the Register of Copyrights in Washington, D. C. on the

7th day of January, 1947 in volume 617, pages 202 through 215. Inasmuch as these agreements have been recorded and as a result thereof have become a public record, we respectfully ask the Court to take judicial notice of them and their contents.

The said agreements with Music Publishers Holding Corporation are annexed hereto as Appendix D.

Subsequently in March of 1947 B. G. DeSylva and his wife Marie DeSylva, the petitioner herein, entered into an agreement with Shapiro, Bernstein & Co., Inc., another publisher selected by the said B. G. DeSylva, pursuant to which they assigned to that publisher other musical compositions written in part by DeSylva.

This agreement was recorded in the Office of the Register of Copyrights on the 13th day of June, 1952 in volume 635, pages 189-190, and in view of the said recording, we respectfully ask the Court to take judicial notice of it and its contents.

The said agreement with Shapiro, Bernstein & Co., Inc. is annexed hereto as Appendix E.

The aforementioned agreements all were entered into in good faith and for very substantial and valuable considerations, which the respective publishers paid or agreed to pay to B. G. DeSylva (or his wife) relying upon their assumption that there could be no inconsistent or competing claim asserted by any child to the DeSylva renewal copyright interests.

The actual consideration for the agreement made with Shapiro, Bernstein & Co., Inc. (Appendix E) appears upon the face of that agreement. The extent of the considerations for the agreements made with Crawford Music Corporation, T. B. Harms Company and Music

Publishers Holding Corporation is not recited in the said agreements and does not appear from them.[3]

The purpose of these agreements was to vest in the respective publisher-assignees the exclusive renewal copyrights in each of the works set forth, subject to the payment of substantial royalties by said publisher.

Notwithstanding this fact, no sooner had the Court below published its decision, than the respondent as guardian entered into an agreement with a competing publisher pursuant to which the guardian purported to assign to such competing publisher all the right, title and interest of her ward in the aforementioned United States renewal copyrights. The aforementioned agreement was submitted to and approved by the Superior Court of the State of California in and for the County of Los Angeles and was filed in the office of the County Clerk on December 29, 1955, and in view of such filing the said agreement now is a public record and as such, we respectfully ask the Court to take judicial notice of it.

A copy of the said order which includes said agreement is annexed to this brief as Appendix H.

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[3] A portion of the valuable considerations which Crawford Music Corporation, T. B. Harms Company and Music Publishers Holding Corporation actually agreed to pay to B. G. DeSylva (or his wife) in connection with the agreements (Appendices B, C and D), appears in separate agreements, which counsel hesitates making reference to in the body of this brief because said separate agreements were not recorded in the United States Copyright Office. However, in order that this Court may know the facts, these separate agreements, although unrecorded, are attached to this brief. The separate agreement with Crawford Music Corporation and T. B. Harms Company is Appendix F and the agreement with Music Publishers Holding Corporation is Appendix G. The Court may wish to note therefrom that the said agreements required the payment to DeSylva (or his wife) of an aggregate amount of not less than $70,000.00 (in yearly installments) during the 10 year period commencing October 1, 1946.

It must be pointed out that insofar as B. G. DeSylva and his wife were concerned, each of these several agreements was intended to grant and assign only to the particular publisher named therein, the exclusive ownership of the renewal copyrights of certain specified musical compositions.

One of our purposes in calling the Court's attention to these facts is to demonstrate the manner in which exclusivity in these important works will be destroyed with the inevitable result that their value also must necessarily be destroyed or greatly diminished.

It must be borne in mind that B. G. DeSylva was a very talented and famous author, and that his works have become very valuable. They have attained a popularity which is not likely to fade, but is more likely to continue. This is unquestionably the reason why a second publisher was willing to acquire a non-exclusive right in these works, for he was actually doing nothing more than buying an interest in an established property of proven worth.

Despite the value of the DeSylva works the destruction of the exclusivity will have harmful effects upon them although they may not be destroyed completely.

However, in the case of works of lesser importance, the destruction of exclusivity must result in the complete destruction of their value.

It has been held that the renewal copyright constituted "a new creation for the benefit (if the author be dead) of those naturally dependent upon or properly expectant of the author's bounty". (*Silverman* v. *Sunrise Pictures Corporation, supra.*) To effectively grant a right of substantial value to the natural objects of the author's bounty, Congress must have intended that the right be secured to the widow during her lifetime, to the

exclusion of the children, for it is in that way that the work may most easily be disposed of and the full benefits thereof most readily reaped.

In the vast majority of normal cases it is the widow, who, after the death of the author, becomes the head of the family, and upon whom rests the burden of rearing and supporting the children of the author. For that reason, in order to carry out the obvious intention of Congress, the statute must be construed so as to grant to the widow the exclusive right in the renewal copyright and the exclusive right to dispose of and capitalize on such renewal copyright and the subject matter thereof.

The decision of the Court below tends to affect adversely the marketability of the renewal copyright after the death of the author and to decrease substantially the financial benefits which ordinarily would flow therefrom to the family unit.

The inability of an infant to enter into a binding contract is universally recognized. Therefore, where a widow is left with infant children she could not assign a copyright exclusively to a publisher or other user, nor could she grant any exclusive license under such a renewal copyright because she could give no assurance that her infant children, upon attaining majority, would not give their own assignments or licenses to competing publishers or users of their own choosing.

It might be argued that in such a case the infant child could act through a guardian. But the appointment of a guardian in each such case would be both costly and cumbersome.

The factual situation in the current case is unique in several important particulars and has tended to present the questions for decision in a misleading setting. This case involves the inherent lack of harmony which must

exist between a widow and the mother of her husband's illegitimate child. In the vast majority of cases which confront music publishers the widow and children of a deceased author live in harmony and normal family relationship. Nevertheless, the widowed mother could be prevented from effectively disposing of the renewal copyrights for her own benefit and the benefit of her children because of the inability of such children to enter into binding agreements.

The renewal copyright would become an empty shell if one child in a large family, because of his minority, should be unable to join with the others in making an exclusive grant, or having attained majority, because of improper motive, should assign the renewal copyright to his own assignee.

Thus the decision of the Court below has the effect of depriving the widowed mother with infant children, and the children themselves, of the full benefits of renewal copyrights—benefits which Congress obviously intended they should have—at a time when they probably would be most needed.

A construction of the statute which would recognize the widow, during her lifetime, to the exclusion of the children would not work a disinheritance of the children, because the interpretation contended for would grant to the widow renewals of only those copyrights which came due for renewal after the death of the author and during her lifetime. Any copyright renewable after the death of the widow would be renewable by the children as the persons next in the "order of enumeration" set forth in the statute.

The interpretation contended for by respondent would schematically grant much greater proportionate benefits to the children than to the widow. In other words, under

the respondent's interpretation of the statute, in all cases where there was one or more children, *each child* would share at least equally with the widow in the benefits stemming from those renewal copyrights accruing during the lifetime of the widow.

IV

The interpretation of Section 24 of the Copyright Law which grants to an author's children rights in renewal copyrights equal to and concurrent with the rights of the widow in that respect, is distinctly contrary to the best interests of the author himself.

As the Attorney General stated in his opinion of February 3, 1910, 28 Op. Atty. Gen. 162, 169 in discussing the right of renewal:

> "At any rate, the right of extension was clearly given for the benefit of the author, and the provision should not be construed against him unless the language of the statute clearly requires such construction, which it does not."

In discussing the right of an author to assign his contingent renewal rights Mr. Justice Frankfurter in the case of *Fred Fisher Music Co., Inc. et al.* v. *M. Witmark & Sons* (1943), 318 U. S. 643, 657 stated:

> "If an author cannot make an effective assignment of his renewal, it may be worthless to him when he is most in need."

The extent to which these principles apply to the facts in the case at bar is apparent. As heretofore set forth, B. G. DeSylva, the author in this case, entered into agreements with various publishers selected by him on the 26th day of September, 1946 and in March of 1947 pursuant

to which, for substantial and valuable considerations, he assigned to each of them his exclusive rights of renewal in the particular musical compositions referred to in each such separate agreement. It was a simple matter for DeSylva to have his wife join with him in all those transactions.

At that time the respondent's ward was five or six years of age. It would not have been simple, even if it were at all possible, to obtain a binding commitment from the infant.

The publishers were willing to enter into the agreements with DeSylva because they assumed that they were reasonably certain of acquiring thereby the exclusive DeSylva rights. It appeared that if the author himself lived and became vested with the right to renew copyrights, which right at the time was merely contingent, they, the publishers, would acquire said renewal rights directly from the author.

Additional security was provided by the joining of the author's wife in said agreements in view of the assumption that if the author died before the right of renewal accrued, his wife as widow would succeed to the exclusive renewal right.

Under the decision of the Court below, however, the widow's right is merely non-exclusive because of the interpretation placing the child and widow in the same class. Accordingly, it would not have been possible for the author himself, even with his wife, to have granted to the publisher a complete, marketable title to the renewal copyrights.

Hence, it becomes clear that the decision below adversely affects the interests of authors themselves. As an author grows older and desires to realize the benefits which can ordinarily be obtained from the assignment

of his renewal rights, any factor which adversely affects the marketability of his title or renders more difficult his disposition of his rights, is to be frowned upon. Most certainly the same reasoning applies to the author's widow with equal force.

V

Since the passage of the Copyright Law, publishers and authors have interpreted the statute as giving the widow an exclusive right with respect to renewals accruing during her lifetime, and have acted accordingly.

The statute before the Court was enacted in 1909.

The language of section 24 appeared clear in that the renewal right of a widow preceded and was exclusive of the right of children.

On February 3, 1910 the Attorney General of the United States, in an opinion construing the effect of this section, stated that the extension or renewal is to be "procured by the author, if living, or if dead, by the persons, and in the order mentioned in the preceding section". (28 Op. Atty. Gen. 162 *supra.*)

Thereafter, and in 1921, the Court of Appeals, Second Circuit, judicially interpreted section 24 in the case of *Silverman* v. *Sunrise Pictures Corporation, supra,* and stated that the renewal provisions "give the renewal right *to the persons enumerated in the order of their enumeration*". (Italics supplied.)

In 1925 Richard C. DeWolf, an attorney attached to the United States Copyright Office when the statute in ques-

tion went into effect, in his "An Outline of Copyright Law" stated at pages 65 and 66:

> "The renewal can only be obtained by the beneficiaries expressly named in the law, and by them in the order named, i. e., the person having the first right is the author, if living, at the end of the original term; *if he is not living, then the widow or widower, is entitled to renew; if there is no widow or widower, the children come in;* in their absence, the executor of the author's will; and finally in the absence of all other beneficiaries and the intestacy of the author, the author's next of kin are entitled to renewal." (Italics supplied.)

It was only reasonable that because of the language of the statute itself, and because of the interpretations of this language given by such authorities, authors and publishers assumed that the renewal right secured to the widow had precedence over any such right in the children.

A strong indication of this assumption appears in one of the most recent copyright cases heard by this Court, *Fred Fisher Music Co., Inc.* v. *M. Witmark & Sons* (*supra*). In that case both parties were represented by some of the foremost copyright attorneys of the day. It is significant that in their briefs, both sides conceded that upon the author's death, the widow alone succeeded to the right of renewal. The attorneys for the petitioners in that case stated at page 25 of their brief:

> "No purchaser could logically be expected to pay full value for property which he may never receive. The purchase price must be diluted by the contingency that the seller might not survive to file the application and deliver the renewal. If the author's wife be joined in the conveyance, the title is still not complete. *She may fail to survive and the right will pass to the children* free of the claims of the purchaser." (Italics supplied.)

The attorney for the respondent in that case stated at page 5 of his brief—

> "Under this statutory scheme, the author, *and the widow and children in their turn*, have a contingent right in the renewal term." (Italics supplied.)

As a matter of fact, this honorable Court in deciding that case, appeared to make the same assumption, for in footnote 2 to the majority opinion delivered by the Court, Mr. Justice Frankfurter stated,

> "2 Ball and Olcott were no longer living at the time and under sec. 23 of the act their interests in the renewal passed to their widows."[4]

Ernest R. Ball and Chauncey Olcott, referred to by Mr. Justice Frankfurter, were well known composers and the music industry knew that each of them had at least one child then living. Accordingly, this footnote further fortified the industry in its interpretation of the statute to the effect that the widow's renewal rights were prior to and exclusive of those of children.

That the statute was given the same interpretation by the motion picture industry twenty years before the case of *Fred Fisher Music Co., Inc.* v. *M. Witmark & Sons* (*supra*) is apparent from the brief filed in this Court in behalf of Fox Film Corporation in the case of *Fox Film Corporation* v. *Knowles et al.* (1923), 261 U. S. 326. In that case which involved the right of an executor to renew a copyright, the author having died leaving neither a widow nor children surviving him, petitioner stated at page 19 of its brief:

> "If, to these arguments, it be answered that the widow and children receive the right to renewal not in any way through the author but by a pure statutory grant

[4] The former section 23 referred to by Mr. Justice Frankfurter in the footnote to his opinion, became section 24 by the Act of July 30, 1947, c. 391 § 1, 61 Stat. 652.

upon the beginning of the year, it may be answered that executors being enumerated with widows and children in the statute, likewise receive the renewal rights at the prescribed time, the only condition being that the widow and children are preferred *in their order.*" (Italics supplied.)

In view of this interpretation of the statute, which over the years has become accepted almost universally, music publishers have entered into countless agreements with widows for the assignment of contingent renewal rights. As a rule these agreements provide that the publisher may renew the copyright as attorney-in-fact for the widow and invariably publishers have renewed such copyrights, in accordance with such agreements and in accordance with their interpretation of the law, in the name of the widow to the exclusion of children notwithstanding their existence, and have taken assignments from such widows alone and have acted under such assignments.

In practically all cases where copyrights actually had been renewed by and in the name of the widow, publishers have accepted assignments of such copyrights from the widow alone as full owner of such renewals, and in all cases these assignments have been acted upon.

In some cases where it was possible to obtain the signatures of the author, his wife and children, such signatures were secured. These signatures were obtained not because of a belief that such children, upon the death of the author, had rights equal to or concurrent with those of the widow, but only to cover the possibility that both parents might die before the arrival of the time to renew the copyrights in question.

In reaching its conclusion in the case of *Fred Fisher Music Co., Inc.* v. *Witmark & Sons* (*supra*), this Court stated at page 657

"We are fortified in this conclusion by reference to

> the actual practices of authors and publishers with respect to assignment of renewals, as disclosed by the records of the Copyright Office."

and further stated at page 658

> "Many assignments have thus been entered into in good faith upon the assumption that they were valid and enforceable."

The decision of the Court below, therefore, causes great doubt and confusion, even though the assignments were entered into in good faith and upon the assumption that they were valid, enforceable and exclusive.

The case at bar is an actual example of such a situation. An examination of the records of the Office of the Register of Copyrights will disclose that since the death of B. G. DeSylva, the copyrights of ninety-five musical compositions included in and covered by the agreements made with Crawford Music Corporation and T. B. Harms Company (Appendices B and C) have been renewed in the name of his widow and that in accordance with said agreements the said renewals have been assigned by the widow to the particular publisher named therein.

An examination of said records will further disclose that since the death of B. G. DeSylva the copyrights of ninety-three musical compositions included in and covered by the agreement made with Music Publishers Holding Corporation (Appendix D) have been renewed in the name of his widow, and that in accordance with said agreements said renewals have been assigned by the widow to the particular publisher designated therein.

A further examination of said records will disclose that since the death of B. G. DeSylva, the copyrights of eleven musical compositions, included in and covered by the agreement made with Shapiro, Bernstein & Co., Inc. (Appendix E) have been renewed in the name of his widow,

and that in accordance with said agreement said renewals have been assigned by the widow to Shapiro, Bernstein & Co., Inc.

As appears from the agreement made by respondent (Appendix H), the respondent claims and has attempted to effect an assignment of a proprietary interest in all these renewed copyrights to another publisher, and in addition respondent also has purported to assign to such other publisher the copyrights in a great many additional musical compositions, renewals of which have not yet accrued, but which were included within the terms of the aforementioned agreements (Appendices B, C, D and E).

VI

The confusion resulting from the construction of the statute by the Court below is greatly increased by its holding that the word "children" as used in the statute includes an illegitimate child.

When the Court below construed section 24 in such a way as to treat the widow and child of a deceased author as being in the same class for the purpose of renewing copyrights, it is doubtful that there was taken into consideration the fact that as such, not only would each share in the financial benefits inuring therefore, but in addition each would have an independent right to dispose of the entire property to one of his own choosing.

We already have pointed out the manner in which this tends to break down and destroy exclusivity.

When this circumstance is considered in conjunction with the holding in favor of an illegitimate child, the pos-

sibilities become more appalling and it appears that dealings for renewal copyrights become almost impossible.

In the case at bar, the child, although illegitimate, appears to have been recognized by its father and was generally known of. However, in the vast majority of cases, the existence of an illegitimate child is still looked upon as something to be concealed, and most often illegitimate children are not publicly recognized but are kept hidden and secreted to every extent possible. Hence, a bona fide purchaser for value of a renewal copyright from the widow of a deceased author never could be absolutely certain that his rights would not be subject to diminution and his exclusivity destroyed as a result of an attack by an assignee of an illegitimate child of the author who might turn up suddenly at any time.

Hence, the decision below has a most serious impact upon the widows of authors and their intended assignees or licensees, and in addition must ultimately affect adversely the public itself. The decision also must raise a doubt as to the rights of legitimate children of an author after he and his widow have died, for there always remains a danger of an unknown illegitimate child entering upon the scene. Surely there are many works the public never will see or hear or have an opportunity to read because of the hesitation with which publication and production deals will be made with authors' widows or their legitimate children.

The decision below has the effect of placing a potential cloud upon each and every copyright which is not renewed by the author himself during his lifetime.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals, Ninth Circuit, should be reversed.

Respectfully submitted,

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APPENDIX A

TITLE 17—UNITED STATES CODE

§ 24. DURATION; RENEWAL AND EXTENSION.—The copyright secured by this title shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children, be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication.

APPENDIX B

AGREEMENT made this 26th day of September, 1946, by and between B. G. DESYLVA (also known as "BUD DESYLVA and GEORGE GARD DESYLVA"), hereinafter designated "Author", and CRAWFORD MUSIC CORPORATION, a New York corporation, hereinafter designated the "Corporation".

In consideration of the sum of One Dollar and other good and valuable consideration by each of the parties hereto to the other in hand paid at or before the ensealing and delivery of these presents, receipt of which is hereby acknowledged, it is agreed:

I. The Author, subject to the terms, conditions and reservations hereinafter set forth, hereby sells, assigns, transfers and sets over unto the Corporation and its successors and assigns, the renewal copyrights of the musical compositions set forth in Schedule A, hereto annexed, and all his right, title and interest, vested and contingent, therein and thereto, subject to the payment of the royalties hereinafter provided for, and the Author does hereby authorize and empower the Corporation to renew pursuant to law, for and in his name, if living, the copyrights of the musical compositions set forth in Schedule A, and the Author hereby constitutes and appoints the Corporation and its successors or assigns, and their agents, officers, servants and employees, or any of them, or the appointee or designee of them or any of them, his agent and attorney in fact to renew pursuant to law for and in his name, if living, the copyrights of the said musical compositions and each of them mentioned in Schedule A, and to execute and deliver in his name and on his behalf a formal instrument or instruments assigning to the Corporation and its successors, assigns or designees, the renewal copyrights of the said musical compositions and each of them, subject to the terms and conditions hereinafter contained. If

the Copyright Law of the United States, now in force shall be changed or amended so as to provide for an extended or longer term of copyright, then the Author hereby sells, assigns, transfers and sets over unto the Corporation and its successors, assigns or designees, all his right, title and interest in and to the musical compositions covered by this agreement for such extended or longer term of copyright.

II. The Corporation agrees to pay or cause to be paid, commencing with the beginning of the first quarter after the execution and delivery hereof, the following royalties upon all compositions covered hereby, published and sold by and paid for to the Publisher in the United States of America and Canada.

(a) Popular numbers:

Regular pianoforte copies—Three cents (3¢) per copy.

(b) Numbers written for and used in motion picture productions, regular pianoforte copies—Four cents (4¢) per copy.

(c) Numbers written for and used in living stage productions, regular pianoforte copies—Six cents (6¢) per copy.

(d) Orchestrations—Three cents (3¢) per copy.

(e) All other editions than those herein specifically provided for—Ten percent (10%) of the wholesale price.

(f) Twelve dollars and Fifty cents ($12.50) as and when any of the said compositions is published in any folio or composite work, regardless of the number of copies published.

(g) Folios and/or composite works, as referred to in the next preceding subdivision hereof, shall be

deemed to include any publication of a collection of at least five (5) or more works, musical compositions or separate lyrics, contained within the same volume and/or binding.

(h) No royalties shall be payable for professional material not sold or resold.

(i) An amount equal to Fifty percent (50%) of all receipts of the Corporation in respect to any licenses issued authorizing the manufacture of parts of instruments serving to reproduce the said compositions, to use the said compositions in synchronization with sound motion pictures, or to reproduce them upon so-called "electrical transcriptions" for broadcasting purposes in the United States and Canada, and any and all receipts of the Corporation from any similar source or right now known or which may hereafter come into existence in the United States and Canada.

(j) The Author shall not be entitled to any share of the moneys distributed to the Corporation by the American Society of Composers, Authors and Publishers, or by or through any other performing rights society or agency throughout the world, if writers receive through the same source an amount which, in the aggregate, is at least equal to the aggregate amount distributed to the Corporation. If, however, the small performance rights shall be administered directly by the Corporation, then the Corporation shall pay an amount equal to fifty percent (50%) of all net sums received by the Corporation therefrom.

The Corporation also agrees to pay or cause to be paid commencing with the beginning of the first quarter after the execution and delivery hereof, for and during the term of the respective copyrights thereof in all countries

outside of the United States and Canada, Fifty percent (50%) of all receipts from sales and uses (subject to the deduction of foreign income taxes, if any).

Where, however, numbers are printed in Canada by a distributor, licensee or representative of the Corporation, all copies of such numbers so printed and sold in Canada may, at the option of the Corporation, be treated by the Corporation as foreign sales and the rates of royalty and provision applicable to countries outside of the United States and Canada may apply.

The said royalties shall be paid upon each and all of the entire compositions (lyrics and music), and if the Author shall not be the Author of the entire composition (lyrics and music), then such royalties shall be divided one-half to the authors and one-half to the composers of each separate number, unless otherwise agreed upon by the writers.

Payment of all royalties accruing to the Author shall be made to the Author, while living, then to such person or persons as shall be lawfully entitled thereto.

III. The Author agrees that his wife, Mario DeSylva, shall execute a separate instrument in the form hereto annexed, marked B, and made part hereof.

IV. This agreement shall be binding upon and shall inure to the benefit of the Author and his heirs, executors, administrators and assigns, the Corporation and its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

B. G. DESYLVA (L. S.)
B. G. DeSylva

CRAWFORD MUSIC CORPORATION
By MAX DREYFUS

State of California,
County of Los Angeles—ss.:

On this 26 day of September 1946, before me personally came B. G. DeSylva, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Beatrice Kaye
Notary Public
In and for the State of California,
County of Los Angeles
My Commission Expires June 26, 1950

(Seal)

SCHEDULE A

Ask Me Another
Atlas Is Itless
Blue Grass
Broken-Hearted
But She's My Girl Now
College Humor
Don't Tell Her What's Happened To Me
Flaming Youth
Forgetting You
For Old Times' Sake
I Always Go To Sleep With The Blues
I Found My Way To You
I Hope I Don't Meet Molly
I'll Fool That Sweet Senorita
In The Meantime
It All Depends On You
It Goes On Like That

It's A Wonderful Wonderful World
I Want To Be Miles Away From Ev'ryone
I Wonder How I Look When I'm Asleep
Just A Sweet Old Gent And A Quaint Old Lady
Keeper Keeper Take The Boy Away
Magnolia
Mammy Is Gone
My Long Lost Man
My Sin
Oh Baby Don't We Get Along
Oh Murphy
Old Fashioned Mother
One More Time
One O'Clock Baby
Plenty of Sunshine
Put It In The Bank
Seven Veils
She's A Home Girl
So Blue
Sorry For Me
South Wind
Tait Song
The Church Bells Are Ringing For Mary
The Song I Love
The Two Two Choo Choo
This Song Is Not About Lindbergh
Together
We've Got Nothin' To Use
When The Autumn Leaves Of Life Begin To Fall
You Could Have Been The One Baby
You Leave Me Limp
You Try Somebody Else
You Won't See Me
Without You Sweetheart
Wop Song
You'll Do

GOOD NEWS

A Girl Of Pi Beta Phi
Baby-What?
Good News
Happy Days
He's A Ladies Man
Just Imagine
Lucky In Love
The Best Things In Life Are Free
The Varsity Drag

FOLLOW THRU

A Man's Man
Button Up Your Overcoat
Follow Thru
I Could Give Up Anything But You
It's A Great Sport
I Want To Be Bad
My Lucky Star
Then I'll Have Time For You
No More You
Still I'd Love You
You Wouldn't Fool Me

HOLD EVERYTHING

Don't Hold Everything
Footwork
Geneology
Heel Beat
Here's One Who Wouldn't
Oh Gosh
Outdoor Man
'Sall Over But The Shouting
To Know You Is To Love You
Too Good To Be True
We're Waiting For The Weather

HOLD EVERYTHING (continued)

When I Love I Love
You're The Cream In My Coffee

SCANDALS OF 1928

An Old Fashioned Girl
Alone With Only Dreams
American Tune
Bums
Fathers Of The World
I'm On The Crest Of A Wave
Pickin' Cotton
Second Childhood
Tap Dance
What D'Ya Say
Where Your Name Is Carved With Mine

THREE CHEERS

Because You're Beautiful
It's An Old Spanish Custom
Lady Luck Smile On Me
Maybe This Is Love
Pompanola
Two Boys

SUNNYSIDE UP

Aren't We All
Carnival Prelude
It's Great To Be Necked
Sunnyside Up
Turn On The Heat
You Find The Time
You've Got Me Pickin' Petals
If I Had A Talking Picture Of You

SAY IT WITH SONGS

I'm In Seventh Heaven
Little Pal
Used To You
Why Can't You

THE SINGING FOOL

Sonny Boy

JUST IMAGINE

I Am Only The Words
Monkey Dance
Never Swat A Fly
Romance Of Elmer Stremingway
There's Something About An Old Fashioned Gi

FLYING HIGH

Airminded
Good For You
Happy Landing
I'll Get My Man
I'll Know Him
I'm Flying High
It'll Be The First Time For Me
Red Hot Chicago
Rusty's Up In The Air
Thank Your Father
Wasn't It Beautiful
Without Love

INDISCREET

Come To Me
If You Haven't Got Love

LOVE AFFAIR

Wishing (Will Make It So)

In Old Arizona

My Tonia

All other compositions written in whole or in part by B. G. DeSylva and published by DeSylva, Brown & Henderson, Inc. or Crawford Music Corporation whether or not enumerated above are included.

EXHIBIT B

The undersigned, Marie DeSylva, wife of B. G. DeSylva, hereby acknowledges that she has read the agreement dated September 26th, 1946, made by B. G. DeSylva with Crawford Music Corporation, and in consideration of the sum of One Dollar and other good and valuable consideration, to the undersigned in hand duly paid, at or before the ensealing and delivery of these presents, receipt of which is hereby duly acknowledged, the undersigned hereby agrees to be bound by the same, and in the event that she should become entitled to secure renewal of the copyright in any of the musical numbers embraced by said agreement, she agrees that all such renewals of copyright shall come under said agreement, and said agreement shall be extended to and deemed to include said renewals of copyright. She agrees to execute, acknowledge and deliver, from time to time, such assignments or other instruments that may be necessary, expedient, and proper to carry out and effectuate the foregoing, and the undersigned does hereby irrevocably appoint Crawford Music Corporation and its successors and assigns, or any of its agents, servants, officers and employees, or any of them, or the appointee or designee of any of them, her true and lawful attorney for her and in her place and stead to procure and obtain renewals of copyrights of the musical compositions referred to and covered by the said agreement, and to execute and deliver in her name formal as-

signments to the Corporation, its successors and assigns, of such renewals of copyright and each of them, subject to the provisions of the said agreement.

Dated:

MARIE DESYLVA (L. S.)

IN THE PRESENCE OF:
A. L. BERMAN

State of California,
County of Los Angeles—ss:

On this 26th day of September 1946, before me personally came MARIE DESYLVA, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

BEATRICE KAYE
Notary Public,
In and for the State of California,
County of Los Angeles
My Commission Expires June 26, 1950

(Seal)

A.

COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA
THE LIBRARY OF CONGRESS—Washington

This is to certify that the attached instrument was recorded in the assignment records of the Copyright Office, vol. 614, pages 53-63 on November 15, 1946.

In testimony whereof, the seal of this Office is affixed hereto.

SAM B. WARNER
Register of Copyrights

(Seal)

Librarian of Congress
Copyright Office
United States of America

APPENDIX C

AGREEMENT made this 26th day of September, 1946, by and between B. G. DESYLVA (also known as "BUD DESYLVA and GEORGE GARD DESYLVA"), hereinafter designated "Author", and T. B. HARMS COMPANY, a New York corporation, hereinafter designated the "Corporation".

In consideration of the sum of One Dollar and other good and valuable consideration by each of the parties hereto to the other in hand paid at or before the ensealing and delivery of these presents, receipt of which is hereby acknowledged, it is agreed:

I. The Author, subject to the terms, conditions and reservations hereinafter set forth, hereby sells, assigns, transfers and sets over unto the Corporation and its successors and assigns, the renewal copyrights of the musical compositions set forth in Schedule A, hereto annexed, and all his right, title and interest, vested and contingent, therein and thereto, subject to the payment of the royalties hereinafter provided for, and the Author does hereby authorize and empower the Corporation to renew pursuant to law, for and in his name, if living, the copyrights of the musical compositions set forth in Schedule A, and the Author hereby constitutes and appoints the Corporation and its successors or assigns, and their agents, officers, servants and employees, or any of them, or the appointee or designee of them or any of them, his agent and attorney in fact to renew pursuant to law for and in his name, if living, the copyrights of the said musical compositions and each of them mentioned in Schedule A, and to execute and deliver in his name and on his behalf a formal instrument or instruments assigning to the Corporation and its successors, assigns or designees, the renewal copyrights of the said musical compositions and each of them, subject to the terms and conditions hereinafter contained. If the Copyright Law

of the United States, now in force shall be changed or amended so as to provide for an extended or longer term of copyright, then the Author hereby sells, assigns, transfers and sets over unto the Corporation and its successors, assigns or designees, all his right, title and interest in and to the musical compositions covered by this agreement for such extended or longer term of copyright.

II. The Corporation agrees to pay or cause to be paid, commencing with the beginning of the first quarter after the execution and delivery hereof, the following royalties upon all compositions covered hereby, published and sold by and paid for to the Publisher in the United States of America and Canada:

(a) Popular numbers:
Regular pianoforte copies—Three cents (3¢) per copy.

(b) Numbers written for and used in motion picture productions, regular pianoforte copies—Four cents (4¢) per copy.

(c) Numbers written for and used in living stage productions, regular pianoforte copies—Six cents (6¢) per copy.

(d) Orchestrations—Three cents (3¢) per copy.

(e) All other editions than those herein specifically provided for—Ten percent (10%) of the wholesale price.

(f) Twelve Dollars and Fifty Cents ($12.50) as and when any of the said compositions is published in any folio or composite work, regardless of the number of copies published.

(g) Folios and/or composite works, as referred to in the next preceding subdivision hereof, shall be deemed to include any publication of a collection of at least five (5) or more works, musical composi-

tions or separate lyrics, contained within the same volume and/or binding.

(h) No royalties shall be payable for professional material not sold or resold.

(i) An amount equal to Fifty percent (50%) of all receipts of the Corporation, in respect to any licenses issued authorizing the manufacture of parts of instruments serving to reproduce the said compositions, to use the said compositions in synchronization with sound motion pictures, or to reproduce them upon so-called "electrical transcriptions" for broadcasting purposes in the United States and Canada, and any and all receipts of the Corporation from any similar source or right now known or which may hereafter come into existence in the United States and Canada.

(j) The Author shall not be entitled to any share of the moneys distributed to the Corporation by the American Society of Composers, Authors and Publishers, or by or through any other performing rights society or agency throughout the world, if writers receive through the same source an amount which, in the aggregate, is at least equal to the aggregate amount distributed to the Corporation. If, however, the small performance rights shall be administered directly by the Corporation, then the Corporation shall pay an amount equal to fifty percent (50%) of all net sums received by the Corporation therefrom.

The Corporation also agrees to pay or cause to be paid commencing with the beginning of the first quarter after the execution and delivery hereof, for and during the term of the respective copyrights thereof in all countries outside of the United States and Canada, Fifty percent (50%) of all receipts from sales and uses (subject to the deduction of foreign income taxes, if any).

Where, however, numbers are printed in Canada by a distributor, licensee or representative of the Corporation, all copies of such numbers so printed and sold in Canada may, at the option of the Corporation, be treated by the Corporation as foreign sales and the rates of royalty and provision applicable to countries outside of the United States and Canada may apply.

The said royalties shall be paid upon each and all of the entire compositions (lyrics and music), and if the Author shall not be the Author of the entire composition (lyrics and music), then such royalties shall be divided one-half to the authors and one-half to the composers of each separate number, unless otherwise agreed upon by the writers.

Payment of all royalties accruing to the Author shall be made to the Author, while living, then to such person or persons as shall be lawfully entitled thereto.

III. The Author agrees that his wife, Marie DeSylva, shall execute a separate instrument in the form hereto annexed, marked B, and made part hereof.

IV. This agreement shall be binding upon and shall inure to the benefit of the Author and his heirs, executors, administrators and assigns, and the Corporation and its successors and assigns.

IN WITNESS WHEREOF [redacted]es hereto have hereunto set their hands and se[redacted]ay and year first above written.

B. G. DESYLVA (L. S.)
B. G. DeSylva

T. B. HARMS COMPANY
By MAX DREYFUS

State of California,
County of Los Angeles—ss.:

On this 26th day of September 1946, before me personally came B. G. DeSylva, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Beatrice Kaye
Notary Public,
In and for the State of California,
County of Los Angeles
My Commission Expires June 26, 1950

(Seal)

SCHEDULE A

	Composer	Author	
A Business Of Our Own	Jerome Kern	Bud DeSylva	1919
Forget Me Not	Jerome Kern	Bud DeSylva	1919
Give A Little Thought To Me	Jerome Kern	Bud DeSylva	1919
The Language Of Love	Jerome Kern	Bud DeSylva	1919
A Little Backyard Band	Jerome Kern	Bud DeSylva	1919
Look For The Silver Lining	Jerome Kern	Bud DeSylva	1920
A Man Around The House	Jerome Kern	Bud DeSylva	1919
Telephone Girls	Jerome Kern	Bud DeSylva	1919
Whip Poor Will	Jerome Kern	Bud DeSylva	1920
You Must Come Over	Jerome Kern	Bud DeSylva	1921
You Tell 'Em	Jerome Kern	Bud DeSylva	1919
The Sweeting Thing In Life	Jerome Kern	Bud DeSylva	1924

All other compositions written in whole or in part by B. G. DeSylva and published by T. B. Harms Company whether or not enumerated above are included.

EXHIBIT B

The undersigned, MARIE DESYLVA, wife of B. G. DeSylva, hereby acknowledges that she has read the agreement dated September 26th, 1946, made by B. G. DeSylva, with T. B. Harms Company, and in consideration of the sum of One Dollar and other good and valuable consideration, to the undersigned in hand duly paid, at or before the ensealing and delivery of these presents, receipt of which is hereby duly acknowledged, the undersigned hereby agrees to be bound by the same, and in the event that she should become entitled to secure renewal of the copyright in any of the musical numbers embraced by said agreement, she agrees that all such renewals of copyright shall come under said agreement, and said agreement shall be extended to and deemed to include said renewals of copyright. She agrees to execute, acknowledge and deliver, from time to time, such assignments or other instruments that may be necessary, expedient, and proper to carry out and effectuate the foregoing, and the undersigned does hereby irrevocably appoint T. B. HARMS COMPANY and its successors and assigns, or any of its agents, servants, officers and employees, or any of them, or the appointee or designee of any of them, her true and lawful attorney for her and in her place and stead to procure and obtain renewals of copyrights of the musical compositions referred to and covered by the said agreement, and to execute and deliver in her name formal assignments to the Corporation, its successors and assigns, of such renewals of copyright and each of them, subject to the provisions of the said agreement.

Dated:

MARIE DESYLVA (L. S.)
Marie DeSylva

IN THE PRESENCE OF:
A. L. BERMAN

State of California,
County of Los Angeles—ss.:

On this 26th day of September 1946, before me personally came MARIE DESYLVA, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

BEATRICE KAYE
Notary Public,
In and for the State of California,
County of Los Angeles
My Commission Expires June 26, 1950

(Seal)

A

COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA
THE LIBRARY OF CONGRESS—Washington

This is to certify that the attached instrument was recorded in the assignment records of the Copyright Office, vol. 614, pages 64-71 on November 15, 1946.

In testimony whereof, the seal of this Office is affixed hereto.

SAM B. WARNER

Register of Copyrights

(Seal)

Librarian of Congress
Copyright Office
United States of America